

## **REMARKS**

### **SUMMARY**

In the Office Action of February 5, 2004, the Examiner rejected Claims 1, 7, and 10 based on 35 U.S.C. 102(b) in light of Delport, and acknowledged that certain claims included allowable subject matter. All the claims were rejected on the basis of double patenting, but the Examiner indicated that Claims 12-16 (Applicants' believe Claims 13-16) would be allowed if the double patenting rejection is overcome. The Applicants have amended some of the claims originally submitted, and Claims 2, 8 and 10 that were objected to, are amended along the lines suggested by the Examiner. Applicants believe that the rejections based on 35 U.S.C. 10299b) are now moot in view of these amendments.

### **DISCUSSION OF PRIOR ART**

The Examiner asserted that all the elements set forth in Claims 1, 7, and 9 were disclosed by Delport. Delport does not disclose nor suggest a mobile fluid transfer machine as taught by the Applicants. Claims 1, 7, and 9 are now amended to distinguish clearly Applicants' invention from Delport.

### **NO SURRENDER OF PATENTABLE SUBJECT MATTER AND FESTO DOCTRINE**

The amended claims broadly recite the subject matter that the Applicant believes is allowable based on the statements made by the Examiner in the last Office Action, taking into consideration the limitations of the English

language and the inability of the Applicants to foresee all the possible equivalents that may be developed in the future.

The claims re-presented in independent form avoid the application of the Festo doctrine, Festo Corp. v Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd., et al 535 U. S. 722 (2002). The Applicant does not consider the changes in claims re-presented in independent form to be an amendment as contemplated in Festo. Consequently, these changes in the form of these claims do not result in surrendering any patentable subject matter because the Examiner only objected to the form, necessitating that they to be rewritten in independent form or informalities be corrected, or both. Applicants intent to claim broadly the subject matter of their invention and not surrender equivalent subject matter by any narrowing amendment in making the changes to these claims. Therefore, claims re-written in independent form are entitled to the application of the doctrine of equivalents under Warner-Jenkinson v. Hilton Davis Chemical Co., 520 U. S. 17 (1997).

#### DOUBLE PATENTING REJECTION

With respect to the double patenting rejection, the Applicants will consider filing a terminal disclaimer of any claims finally rejected on this basis, but otherwise allowable.

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In view of the above, the application is deemed to be in a condition for allowance and such action is solicited.

### TELEPHONE INTERVIEW

If the Examiner believes that a telephone interview would advance the allowance of this application, Applicant's attorney requests the Examiner call to arrange a date and time for such interview after having an opportunity to review the above amendments and consider the above remarks.

### CUSTOMER NUMBER

Please note Applicant's attorney Customer No. 021905, and confirm that this customer number has been entered in the U. S. Patent & Trademark Office records in connection with the above-identified application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Connors", with a long horizontal flourish extending to the right.

John L. Connors, Reg. No. 24,157

CONNORS & ASSOCIATES, INC.  
1600 Dove Street, Suite 220  
Newport Beach, CA 92660

PHONE 949-833-3622  
FAX 949-833-0885